



Sen. Ira I. Silverstein

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1 AMENDMENT TO SENATE BILL 2894

2 AMENDMENT NO. _____. Amend Senate Bill 2894 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Guardianship and Advocacy Act is amended by
5 changing Section 31 as follows:

6 (20 ILCS 3955/31) (from Ch. 91 1/2, par. 731)

7 Sec. 31. Availability of guardian; appointment of State
8 Guardian. The State Guardian shall not be appointed if another
9 suitable person is available and willing to accept the
10 guardianship appointment. In all cases where a court appoints
11 the State Guardian, the court shall indicate in the order
12 appointing the guardian as a finding of fact that no other
13 suitable and willing person could be found to accept the
14 guardianship appointment. On and after the effective date of
15 this amendatory Act of the 97th General Assembly, the court
16 shall also indicate in the order, as a finding of fact, the

1 reasons that the State Guardian appointment, rather than the
2 appointment of another interested party, is required. This
3 requirement shall be waived where the Office of State Guardian
4 petitions for its own appointment as guardian.

5 (Source: P.A. 89-396, eff. 8-20-95.)

6 Section 10. The Clerks of Courts Act is amended by adding
7 Section 27.3f as follows:

8 (705 ILCS 105/27.3f new)

9 Sec. 27.3f. Guardianship and advocacy operations fee.

10 (a) As used in this Section, "guardianship and advocacy"
11 means the guardianship and advocacy services provided by the
12 Guardianship and Advocacy Commission and defined in the
13 Guardianship and Advocacy Act. Viable public guardianship and
14 advocacy programs, including the public guardianship programs
15 created and supervised in probate proceedings in the Illinois
16 courts, are essential to the administration of justice and
17 ensure that incapacitated persons and their estates are
18 protected. To defray the expense of maintaining and operating
19 the divisions and programs of the Guardianship and Advocacy
20 Commission and to support viable guardianship and advocacy
21 programs throughout Illinois, each circuit court in a county
22 with a population of 1,000,000 or more, or a county with a
23 population greater than 650,000 but less than 1,000,000 that
24 has, though duly authorized action, chosen not to accept

1 appointment of the Office of State Guardian as the Public
2 Guardian under Section 13-1.3 of the Probate Act of 1975, shall
3 charge and collect a fee on all matters filed in probate cases
4 in accordance with this Section, but no fees shall be assessed
5 against the State Guardian, any State agency under the
6 jurisdiction of the Governor, any public guardian, or any
7 State's Attorney.

8 (b) No fees specified in this Section shall be imposed in
9 any minor guardianship established under Article XI of the
10 Probate Act of 1975 or against an indigent person. As used in
11 this Section, "indigent person" includes any person who meets
12 one or more of the following criteria:

13 (1) He or she is receiving assistance under one or more
14 of the following public benefits programs: Supplemental
15 Security Income (SSI), Aid to the Aged, Blind and Disabled
16 (AABD), Temporary Assistance for Needy Families (TANF),
17 Supplemental Nutrition Assistance Program (SNAP), General
18 Assistance, State Transitional Assistance, or State
19 Children and Family Assistance.

20 (2) His or her available income is 125% or less of the
21 current poverty level as established by the United States
22 Department of Health and Human Services, unless the
23 applicant's assets that are not exempt under Part 9 or 10
24 of Article XII of the Code of Civil Procedure are of nature
25 and value that the court determines that the applicant is
26 able to pay the fees, costs, and charges.

1 (3) He or she is, in the discretion of the court,
2 unable to proceed in an action without payment of fees,
3 costs, and charges and his or her payment of those fees,
4 costs, and charges would result in substantial hardship to
5 the person or his or her family.

6 (4) He or she is an indigent person pursuant to Section
7 5-105.5 of the Code of Civil Procedure providing that an
8 "indigent person" means a person whose income is 125% or
9 less of the current official federal poverty guidelines or
10 who is otherwise eligible to receive civil legal services
11 under the Legal Services Corporation Act of 1974.

12 (c) The clerk is entitled to receive the fees specified in
13 this Section, which shall be paid in advance, and managed by
14 the clerk as set out in paragraph (4), except that, for good
15 cause shown, the court may suspend, reduce, or release the
16 costs payable under this Section:

17 (1) For administration of the estate of a decedent
18 (whether testate or intestate) or of a missing person, a
19 fee of \$50, plus the fees specified in paragraph (3),
20 except:

21 (A) When the value of the real and personal
22 property of a decedent (whether testate or intestate)
23 does not exceed \$15,000, no fee shall be assessed.

24 (B) When (i) proof of heirship alone is made, (ii)
25 a domestic or foreign will is admitted to probate
26 without administration (including proof of heirship),

1 or (iii) letters of office are issued for a particular
2 purpose without administration of the estate, the fee
3 shall be \$40.

4 (2) For administration of the estate of a ward that
5 results in the appointment of the Office of State Guardian,
6 the fee shall be \$250 plus the fees specified in paragraph
7 (3).

8 (3) In addition to the fees payable under paragraph (1)
9 or (2) of this subsection, the following fees are payable:

10 (A) For each account (other than one final account)
11 filed in the estate of a decedent or ward, the fee
12 shall be \$25.

13 (B) For filing a claim in an estate when the amount
14 claimed is \$150 or more but less than \$500, the fee
15 shall be \$100; when the amount claimed is \$500 or more
16 but less than \$10,000, the fee shall be \$115; when the
17 amount claimed is \$10,000 or more, the fee shall be
18 \$135; provided that the court in allowing a claim may
19 add to the amount allowed the filing fee paid by the
20 claimant.

21 (C) For filing in an estate a claim, petition, or
22 supplemental proceeding based upon an action seeking
23 equitable relief including the construction or contest
24 of a will, enforcement of a contract to make a will,
25 and proceedings involving a testamentary trust or the
26 appointment of a testamentary trustee, the fee shall be

1 \$60.

2 (D) For filing in an estate (i) the appearance of
3 any person for the purpose of consent or (ii) the
4 appearance of an executor, administrator,
5 administrator to collect, guardian, guardian ad litem,
6 or special administrator, no fee.

7 (E) Except as provided in subparagraph (D) of this
8 paragraph (3), for filing the appearance of any person
9 or persons, the fee shall be \$30.

10 (F) For each jury demand, the fee shall be \$180.

11 (G) For disposition of the collection of a judgment
12 or settlement of an action or claim for wrongful death
13 of a decedent or of any cause of action of a ward, when
14 there is no other administration of the estate, the fee
15 shall be \$50, less any amount paid under subparagraph
16 (B) of paragraph (1) or subparagraph (B) of paragraph
17 (3) except that if the amount involved does not exceed
18 \$5,000, the fee, including any amount paid under
19 subparagraph (B) of paragraph (1) or subparagraph (B)
20 of paragraph (3), shall be \$20.

21 (4) The guardianship and advocacy operations fees set
22 forth in this Section shall be in addition to all other
23 fees and charges and assessable as costs and shall not be
24 subject to disbursement under Section 27.5 or 27.6 of this
25 Act. Twenty percent of the fee shall be retained by the
26 clerk to defray costs of collection and 80% of the fee

1 shall be disbursed within 60 days after receipt by the
2 circuit clerk to the State Treasurer for deposit by the
3 State Treasurer into the Guardianship and Advocacy Fund.

4 Section 15. The Probate Act of 1975 is amended by changing
5 Sections 11a-3, 11a-12, 11a-20, 13-1, and 13-5 and by adding
6 Section 13-1.3 as follows:

7 (755 ILCS 5/11a-3) (from Ch. 110 1/2, par. 11a-3)

8 Sec. 11a-3. Adjudication of disability; Power to appoint
9 guardian.

10 (a) Upon the filing of a petition by a reputable person or
11 by the alleged disabled person himself or on its own motion,
12 the court may adjudge a person to be a disabled person, but
13 only if it has been demonstrated by clear and convincing
14 evidence that the person is a disabled person as defined in
15 Section 11a-2. If the court adjudges a person to be a disabled
16 person, the court may appoint (1) a guardian of his person, if
17 it has been demonstrated by clear and convincing evidence that
18 because of his disability he lacks sufficient understanding or
19 capacity to make or communicate responsible decisions
20 concerning the care of his person, or (2) a guardian of his
21 estate, if it has been demonstrated by clear and convincing
22 evidence that because of his disability he is unable to manage
23 his estate or financial affairs, or (3) a guardian of his
24 person and of his estate.

1 (b) Guardianship shall be utilized only as is necessary to
2 promote the well-being of the disabled person, to protect him
3 from neglect, exploitation, or abuse, and to encourage
4 development of his maximum self-reliance and independence.
5 Guardianship shall be implemented in the least restrictive
6 alternative, shall maximize the alleged disabled person's
7 right to self-determination and autonomy, and shall be ordered
8 only to the extent necessitated by the individual's actual
9 mental, physical and adaptive limitations. In determining the
10 least restrictive alternative, the court shall consider
11 options that allow the ward to live, learn, and work in a
12 setting that places as few limits as possible on the ward's
13 rights and personal freedom as appropriate to meet the needs of
14 the ward.

15 (Source: P.A. 93-435, eff. 1-1-04.)

16 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)

17 Sec. 11a-12. Order of appointment.)

18 (a) If basis for the appointment of a guardian as specified
19 in Section 11a-3 is not found, the court shall dismiss the
20 petition.

21 (b) If the respondent is adjudged to be disabled and to
22 lack some, but not all, of the ~~be totally without~~ capacity as
23 specified in Section 11a-3, and if the court finds that ~~limited~~
24 guardianship is necessary for the protection of ~~will not~~
25 ~~provide sufficient protection for~~ the disabled person, his or

1 her estate, or both, the court shall appoint a limited ~~plenary~~
2 guardian of ~~for~~ the respondent's person or estate or both. The
3 court shall enter a written order stating the factual basis for
4 its findings and specifying the duties and powers of the
5 guardian and the legal disabilities to which the respondent is
6 subject.

7 (c) If the respondent is adjudged to be disabled and to be
8 totally without ~~lack some but not all of the~~ capacity as
9 specified in Section 11a-3, and if the court finds that limited
10 guardianship will not provide sufficient ~~is necessary for the~~
11 protection for ~~of~~ the disabled person, his or her estate, or
12 both, the court shall appoint a plenary ~~limited~~ guardian for ~~of~~
13 the respondent's person or estate or both. The court shall
14 enter a written order stating the factual basis for its
15 findings ~~and specifying the duties and powers of the guardian~~
16 ~~and the legal disabilities to which the respondent is subject.~~

17 (d) The selection of the guardian shall be in the
18 discretion of the court, which shall give due consideration to
19 the preference of the disabled person as to a guardian, as well
20 as the qualifications of the proposed guardian, in making its
21 appointment.

22 (Source: P.A. 89-396, eff. 8-20-95.)

23 (755 ILCS 5/11a-20) (from Ch. 110 1/2, par. 11a-20)

24 Sec. 11a-20. Termination of adjudication of disability -
25 Revocation of letters - modification.)

1 (a) Except as provided in subsection (c), upon ~~Upon~~ the
2 filing of a petition by or on behalf of a disabled person or on
3 its own motion, the court may terminate the adjudication of
4 disability of the ward, revoke the letters of guardianship of
5 the estate or person, or both, or modify the duties of the
6 guardian if the ward's capacity to perform the tasks necessary
7 for the care of his person or the management of his estate has
8 been demonstrated by clear and convincing evidence. A report or
9 testimony by a licensed physician is not a prerequisite for
10 termination, revocation or modification of a guardianship
11 order under this subsection.

12 (b) Except as provided in subsection (b-5), a ~~A~~ request by
13 the ward or any other person on the ward's behalf, under this
14 Section may be communicated to the court or judge by any means,
15 including but not limited to informal letter, telephone call or
16 visit. Upon receipt of a request from the ward or another
17 person, the court may appoint a guardian ad litem to
18 investigate and report to the court concerning the allegations
19 made in conjunction with said request, and if the ward wishes
20 to terminate, revoke, or modify the guardianship order, to
21 prepare the ward's petition and to render such other services
22 as the court directs.

23 (b-5) Upon the filing of a verified petition by the
24 guardian of the disabled person or the disabled person, the
25 court may terminate the adjudication of disability of the ward,
26 revoke the letters of guardianship of the estate or person, or

1 both, or modify the duties of the guardian if: (1) a report
2 completed in accordance with subsection (a) of Section 11a-9
3 states that the disabled person is no longer in need of
4 guardianship or that the type and scope of guardianship should
5 be modified; (2) the disabled person no longer wishes to be
6 under guardianship or desires that the type and scope of
7 guardianship be modified; and (3) the guardian of the disabled
8 person states that it is in the best interest of the disabled
9 person to terminate the adjudication of disability of the ward,
10 revoke the letters of guardianship of the estate or person, or
11 both, or modify the duties of the guardian and provides the
12 basis thereof. In a petition brought pursuant to this
13 subsection, the court may terminate the adjudication of
14 disability of the ward, revoke the letters of guardianship of
15 the estate or person, or both, or modify the duties of the
16 guardian, unless it has been demonstrated by clear and
17 convincing evidence that the ward is incapable of performing
18 the tasks necessary for the care of his person or the
19 management of his estate.

20 (c) Notice of the hearing on a petition under this Section,
21 together with a copy of the petition, shall be given to the
22 ward, unless he is the petitioner, and to each and every
23 guardian to whom letters of guardianship have been issued and
24 not revoked, not less than 14 days before the hearing.

25 (Source: P.A. 86-605.)

1 (755 ILCS 5/13-1) (from Ch. 110 1/2, par. 13-1)

2 Sec. 13-1. Appointment and term of public administrator and
3 public guardian.) Except as provided in Sections ~~Section~~ 13-1.1
4 and 13-1.3, before the first Monday of December, 1977 and every
5 4 years thereafter, and as often as vacancies occur, the
6 Governor, by and with the advice and consent of the Senate,
7 shall appoint in each county a suitable person to serve as
8 public administrator and a suitable person to serve as public
9 guardian of the county. The Governor may appoint the same
10 person to serve as public guardian and public administrator in
11 one or more counties. In considering the number of counties of
12 service for any prospective public guardian or public
13 administrator the Governor may consider the population of the
14 county and the ability of the prospective public guardian or
15 public administrator to travel to multiple counties and manage
16 estates in multiple counties. Each person so appointed holds
17 his office for 4 years from the first Monday of December, 1977
18 and every 4 years thereafter or until his successor is
19 appointed and qualified.

20 (Source: P.A. 96-752, eff. 1-1-10.)

21 (755 ILCS 5/13-1.3 new)

22 Sec. 13-1.3. Transition to Office of State Guardian.

23 (a) In counties having a population of 1,000,000 or less,
24 the Governor may appoint the Office of State Guardian the
25 Public Guardian in any county in which there is no currently

1 serving public guardian or in which the public guardian's term
2 of office has expired. The State Guardian appointed as public
3 guardian shall serve continuously and not be subject to 4-year
4 terms of appointment. In cases in which the State Guardian
5 serves as public guardian, the State Guardian shall assume only
6 the duties described in Sections 30 and 32 of the Guardianship
7 and Advocacy Act, the monitoring provisions under subsection
8 (a) of Section 13-5 of this Act, and shall be otherwise subject
9 to the provisions of the Guardianship and Advocacy Act and not
10 this Article XIII.

11 (b) In the case where the Governor determines he or she
12 will exercise the discretion to appoint in this Section, 60
13 days notice shall be given to the chief executive officer of
14 the county and the presiding judge of the circuit court in
15 which the county is located. If, within 30 days after the
16 giving of such notice, the presiding judge or county through
17 duly authorized action advises that it will not accept such
18 appointment, then thereafter the Office of State Guardian will
19 be unavailable for appointment in such county and for each case
20 that the State Guardian retains, the county shall pay a
21 percentage of costs of continued representation by the State
22 Guardian in accordance with the fees schedule from time to time
23 established through rulemaking and published by the Joint
24 Committee on Administrative Rules for a county or counties of
25 similar population.

26 (c) Any organizational entity petitioning for guardianship

1 of a ward that results in appointment of Office of State
2 Guardian shall pay a fee of \$500 in addition to all other fees
3 owing by statute or rule if that entity is located in a county
4 that does not pay probate fees enumerated in Section 27.3f of
5 the Clerk of Courts Act.

6 (755 ILCS 5/13-5) (from Ch. 110 1/2, par. 13-5)

7 Sec. 13-5. Powers and duties of public guardian.) The court
8 may appoint the public guardian as the guardian of any disabled
9 adult who is in need of a public guardian and whose estate
10 exceeds \$25,000 in counties having a population of 1,000,000 or
11 greater, or \$100,000 in counties with a population of 650,000
12 or greater but less than 1,000,000; and \$75,000 in counties
13 having a population of 650,000 or less. When a disabled adult
14 who has a smaller estate is in need of guardianship services,
15 the court shall appoint the State guardian pursuant to Section
16 30 of the Guardianship and Advocacy Act. If the public guardian
17 is appointed guardian of a disabled adult and the estate of the
18 disabled adult is thereafter reduced to less than \$25,000, in
19 counties having a population of 1,000,000 or more, or less than
20 \$100,000, in counties having a population of 650,000 or more
21 but less than 1,000,000, the public guardian shall continue to
22 serve as guardian for as long as the guardianship continues. In
23 all other counties, the court may, upon the petition of the
24 public guardian and the approval by the court of a final
25 accounting of the disabled adult's estate, discharge the public

1 guardian and transfer the guardianship to the State guardian.
2 The public guardian shall serve not less than 14 days' notice
3 to the State guardian of the hearing date regarding the
4 transfer. When appointed by the court, the public guardian has
5 the same powers and duties as other guardians appointed under
6 this Act, with the following additions and modifications:

7 (a) The public guardian shall monitor the ward and his care
8 and progress on a continuous basis. Monitoring shall at minimum
9 consist of monthly contact with the ward, and the receipt of
10 periodic reports from all individuals and agencies, public or
11 private, providing care or related services to the ward.

12 (b) Placement of a ward outside of the ward's home may be
13 made only after the public guardian or his representative has
14 visited the facility in which placement is proposed.

15 (c) The public guardian shall prepare an inventory of the
16 ward's belongings and assets and shall maintain insurance on
17 all of the ward's real and personal property. No personal
18 property shall be removed from the ward's possession except for
19 storage pending final placement or for liquidation in
20 accordance with this Act.

21 (d) The public guardian shall make no substantial
22 distribution of the ward's estate without a court order.

23 (e) The public guardian may liquidate assets of the ward to
24 pay for the costs of the ward's care and for storage of the
25 ward's personal property only after notice of such pending
26 action is given to all potential heirs at law, unless notice is

1 waived by the court; provided, however, that a person who has
2 been so notified may elect to pay for care or storage or to pay
3 fair market value of the asset or assets sought to be sold in
4 lieu of liquidation.

5 (f) Real property of the ward may be sold at fair market
6 value after an appraisal of the property has been made by a
7 licensed appraiser; provided, however, that the ward's
8 residence may be sold only if the court finds that the ward is
9 not likely to be able to return home at a future date.

10 (g) The public guardian shall, at such intervals as the
11 court may direct, submit to the court an affidavit setting
12 forth in detail the services he has provided for the benefit of
13 the ward.

14 (h) Upon the death of the ward, the public guardian shall
15 turn over to the court-appointed administrator all of the
16 ward's assets and an account of his receipt and administration
17 of the ward's property. A guardian ad litem shall be appointed
18 for an accounting when the estate exceeds the amount set in
19 Section 25-1 of this Act for administration of small estates.

20 (i)(1) On petition of any person who appears to have an
21 interest in the estate, the court by temporary order may
22 restrain the public guardian from performing specified acts of
23 administration, disbursement or distribution, or from exercise
24 of any powers or discharge of any duties of his office, or make
25 any other order to secure proper performance of his duty, if it
26 appears to the court that the public guardian might otherwise

1 take some action contrary to the best interests of the ward.
2 Persons with whom the public guardian may transact business may
3 be made parties.

4 (2) The matter shall be set for hearing within 10 days
5 unless the parties otherwise agree or unless for good cause
6 shown the court determines that additional time is required.
7 Notice as the court directs shall be given to the public
8 guardian and his attorney of record, if any, and to any other
9 parties named defendant in the petition.

10 (j) (Blank) ~~On petition of the public guardian, the court~~
11 ~~in its discretion may for good cause shown transfer~~
12 ~~guardianship to the State guardian.~~

13 (k) No later than January 31 of each year, the public
14 guardian shall file an annual report with the clerk of the
15 Circuit Court, indicating, with respect to the period covered
16 by the report, the number of cases which he has handled, the
17 date on which each case was assigned, the date of termination
18 of each case which has been closed during the period, the
19 disposition of each terminated case, and the total amount of
20 fees collected during the period from each ward.

21 (l) (Blank).

22 (Source: P.A. 96-752, eff. 1-1-10.)".